VINCENT CHENG KIM CHUAN

v.

THE MINISTER FOR HOME AFFAIRS & ORS.

HIGH COURT, SINGAPORE
LAI KEW CHAI J
[ORIGINATING MOTION NO. 66 OF 1989]
31 JANUARY 1990

ADMINISTRATIVE LAW: *Application for writ of habeas corpus - Section 8(B)(1) - Section 8(B)(2) Internal Security Act - Powers of President of Singapore - Extension of detention order - Decision of minister - Whether irrational or unconstitutional - Legal effectiveness - Constitutional validity - Article 4 of the Constitution.*

This was an application for a writ of *habeas corpus*. The applicant had been detained under the Internal Security Act.

The arguments raised by the applicant were essentially directed against the legal effectiveness and against the constitutional validity of the recent amendments.

Held:

[1] The *Anisminic* principle has no application to the salient facts of this case as there is no evidence that the executive authority has exceeded its mandate or has misdirected itself on the law.

[2] Allegations of *mala fides*, including any allegation that the powers under the Internal Security Act had been used for an improper purpose, are not justiciable issues in the context of the Internal Security Act.

[3] Sections 8(B)(1) and 8(B)(2) of the Internal Security Act have effectively excluded any right of judicial review on the grounds of illegality, irrationality and constitutionality of any detention order.

[4] The constitutional amendments did not in any way alter the basic structure of the Constitution.

[Application dismissed.]

Cases referred to:

Teo Soh Lung v. The Minister for Home Affairs & Ors. [1989] 2 MLJ 449
Chng Suan Tze v. The Minister of Home Affairs & Ors. & Other appeals [1989] 1 MLJ 69
Lee Mau Seng v. Minister of Home Affairs, Singapore & Anor. [1971] 2 MLJ 137
Khawaja v. Home Secretary [1984] AC 74
Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 AC 147
Endell Thomas v. Attorney-General of Trinidad and Tobago [1982] AC 113
Greene v. Secretary of State for Home Affairs [1942] AC 284
GCHQ and R v. Home Secretary, ex parte Ruddock [1987] 1 WLR 1482

Legislation referred to:

Constitution of the Republic of Singapore [Sing], arts. 4, 5, 9, (1), (6), 12(1), 13, 14, (1), 15, (1), 149, 151(1), (3)
Internal Security Act, (Cap 143) [Sing], ss. 8(1), (1)(a), 8A, 8B, (1), (2), 8C, 8D, (2), 10, 11(1), (2)(b), 13

For the applicant - Michael Jacob Beloff QC (Patrick Seong and Peter Low with him)
For the respondents - S. Tiwari (Soh Tze Bian and Joyce Huen with him)

JUDGMENT

Lai Kew Chai J:

This is an application by Vincent Cheng (applicant) for a writ of *habeas corpus*. The applicant has been detained since 21 May 1987 under the Internal Security Act, Cap 143 ('ISA'). Pursuant to the powers conferred on the President (acting on the advice of the Cabinet) under s. 8(2) of the Internal Security Act, which empowers the President to direct that the period of any detention order made under s. 8(1) may be extended for a further period or periods not exceeding two years at a time, the President on 16 June 1989 directed that the period of the applicant's detention be extended until 20 June 1990. The application is based on what the applicant claims to be the illegality, the irrationality and the unconstitutionality of the decision of the Minister of Home Affairs of 19 June 1987 to detain him, purportedly under s. 8 of the Internal Security Act and of the decision of the President of 16 June 1989 to extend his detention order, purportedly pursuant to s. 8(2) of the Internal Security Act.

The arguments raised before me are essentially directed against first, the legal effectiveness and, secondly, against the constitutional validity of the recent amendments, to which detailed reference must unavoidably be made, so far as judicial review of Internal Security Act cases is concerned. These arguments are in several material respects similar to those raised in the High Court in a companion *habeas corpus* application in *Teo Soh Lung v. The Minister for Home Affairs & Ors*. [1989] 2 MLJ 449 where Chua J in a careful judgment delivered on 25 April 1989 rejected the arguments and dismissed the motion. I am exercising co-ordinate jurisdiction with Chua J in this matter and unless I am persuaded according to well established principles to depart from the approach of Chua J and unless I am persuaded in effect to rule that the detention is *ultra vires* the Internal Security Act by applying the objective test, quite apart from the validity or otherwise of the constitutional amendments by Act No. 1 of 1989 and the effectiveness or otherwise of the amendments of the Internal Security Act by Act No. 2 of 1989, which came into operation respectively on 27 and 30 January 1989, the application before me must fail.

The facts may be briefly summarised for present purposes as follows. On 21 May 1987 the applicant was arrested under the Internal Security Act. Five days later the Ministry of Home Affairs issued a detailed press release which stated, *inter alia*, that "the Internal Security Department has uncovered a Marxist conspiracy to subvert the existing social and political system in Singapore through communist united front tactics to establish a communist state." One Tan Wah Piow was named as the mastermind whose principal subordinate in Singapore was the applicant. The Ministry issued further press releases on 27, 28 and 29 May 1987.On 19 June 1987 the applicant was served with an order of detention under s. 8(1) of the Internal Security Act for a period of 2 years with effect from 20 June 1987. As stated earlier that detention order has been extended by the President to 20 June 1990.

The grounds for the detention were set out as follows:

> Since 1981 you acted in a manner prejudicial to the security of Singapore by being the central figure in the Marxist conspiracy masterminded by Tan Wah Piow, to subvert the existing social and political system in Singapore, using communist united front tactics with a view to establishing a Marxist state.

The allegations of fact which the Minister of Home Affairs furnished the applicant pursuant to s. 11(2)(b) of the Internal Security Act were as follows:

> 1. That, since your meeting with Tan Wah Piow, in March 82, in London you carried out Tan Wah Piow's instructions to build up a mass-based united front of grassroots organizations in Singapore to oppose the Government, by violent means, if necessary.

2. That, since October 1981, in furtherance of Tan Wah Piow's objective, you indoctrinated student and catholic activists in Singapore with Marxist ideas, with a view to recruiting them into the Marxist network.

3. That, in January 1986, you formed the Coalition of Organizations for Religion and Development (CORD) in Singapore to exert influence and control over Catholic organizations and their leaders so that they could become a political pressure group and part of a united front to subvert the existing social and political system.

4. That in November 1986, you were involved, together with some Catholic priests and activists, in forming an "*Ad hoc* Group", in Singapore, which you intended to use to further the Marxist conspiracy.

5. That, under the aegis of the Justice and Peace Commission (JPC), Singapore, you manipulated JPC to disseminate leftist and anti-establishment ideas to subvert the Catholic Church.

The Minister for Home Affairs in his affidavit filed in these proceedings stated that prior to the issue of the detention order in respect of the applicant the Cabinet considered the report of the Internal Security Department (ISD). The report was made by reasons in the ISD who were experienced in investigating matters of the kind in hand and who were under a duty to report on the same to the Government. As the Cabinet was satisfied that since 1981 the applicant had acted in a manner prejudicial to the security of Singapore and with view to preventing him from acting in any manner prejudicial to the security of Singapore, the Cabinet resolved that the order of detention should be made. The Cabinet therefore tendered its advice to the President of Singapore. The Internal Security Department report was also submitted to the President. The President was satisfied that an order of detention be made against the applicant. After the President's satisfaction was conveyed to the Minister, the Minister made the order of detention dated 19 June 1987.

The applicant, though informed of his rights, did not make any representations to the advisory board pursuant to s. 11(1) of the Internal Security Act. On 26 May 1988 the applicant was informed that he could appear before the advisory board on 9 June 1988 concerning the review of the order of detention relating to him. On 9 June 1988 the advisory board reviewed his detention in accordance with s. 13 of the Internal Security Act. The applicant was present and was represented by this lawyer. The advisory board submitted a written report to the Minister on 10 June 1988. The board reported that the applicant's continued detention was justified.

On 8 April 1989 the applicant was informed that he could appear before the advisory board on 22 April 1989 concerning the review of the order of detention relating to him. On 22 April 1989 the board reviewed his detention according to s. 13 of the Internal Security Act. He was present at the review and was represented by another lawyer. In its report dated 24 April 1989 to the Minister, the board recommended that the detention of the applicant be extended for another year. On or about 31 May 1989 the President acting in accordance with the advice of the Cabinet, being satisfied that it was necessary to continue the detention of the applicant with a view to preventing him from acting in any manner prejudicial to the security of Singapore, decided that the detention of the applicant be extended for a further period of one year with effect from 20 June 1989. A copy of the direction which extended the order of detention was duly served on the applicant.

In support of his motion the applicant in his first affidavit denied that he had acted in any manner prejudicial to the security of Singapore. He claimed that the allegations of fact made against him were not supported by any evidence and were untrue. By para. 18 of his affidavit he said he was "retracting" his statements made to the Internal Security Department; he

claimed that his admissions that he was a Marxist and that there was a network were made under duress and that force was used against him. He protested his innocence and claimed that all his activities were motivated by his Christian faith and they were in response to the call of Vatican Council II. He claimed that Article 9(1), 12(1), 14(1) and 15(1) of the Constitution of the Republic of Singapore ("the Constitution") had been infringed.

In their affidavits filed on behalf of the respondents the Permanent Secretary, Ministry of Home Affairs, and several officers of the Internal Security Department denied that the applicant was subjected to any use of force, assault, battery, duress, coercion or intimidation. In his affidavit the case officer of the Internal Security Department assigned to the applicant's case further stated that the applicant was informed that he would be released when he was rehabilitated and no longer posed a security threat. Contrary to what was alleged by the applicant in his affidavit this Internal Security Department officer stated that the applicant was subjected to a systematic and reasonable program of rehabilitation. He said he and other senior Internal Security Department officers regularly held discussions with the applicant with a view to his rehabilitation. As part of the rehabilitation program the applicant had also been allowed to see the prison chaplin weekly and had met 6 Catholic priests and a Catholic leader from time to time during his detention.

The Permanent Secretary, Ministry of Home Affairs, in his affidavit stated that the Government only decided to act after careful deliberation. In its statement of 20 April 1988 the Ministry stated:

> Internal Security Department had monitored the principal persons, Tan Wah Piow and Vincent Cheng, since the early 1970s. In June 1986, Internal Security Department had apprised the Government of the activities of Vincent Cheng and a group of radicals operating under the cover of the Catholic Church. The Government took a serious view of such undesirable activities.
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> PM registered concern when Pope was in Singapore.
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> On 9 July 1986, the Minister for Home Affairs warned the Archbishop, Monsignor Gregory Yong, about the problem. Despite this, Vincent Cheng and the others continued with their radical activities. Therefore, when the Pope visited Singapore on 20 November 1986, the Prime Minister took it upon himself to register his concern with the Pope in the presence of Archbishop Yong.
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> The Government only decided to launch the May 1987 operation after careful deliberation. It could have allowed the Marxist conspiracy to fester and grow, in order to watch where it would lead, but decided it would be safer to nip the conspiracy in the bud.

The Permanent Secretary, Ministry of Home Affairs further stated that the care with which the matter was dealt with could be seen from the speech of the First Deputy Prime Minister and the Minister for defence made in Parliament on 29 July 1987. The relevant portion of the First Deputy Prime Minister's speech is set out below:

> When Internal Security Department recommended the detention of Vincent Cheng and the others, we did not just take their word for it. We asked many questions. We wanted to be very sure that the conspiratorial activities of the 16 were indeed prejudicial to the security of Singapore. This is the first time that the younger Ministers have to take a tough decision. This is the first time what we have to use the Internal Security Act to deal with a security threat. It is a big decision and because it is a big decision I asked the Minister for Home Affairs to discuss the subject with our other younger colleagues. So all members of the younger leadership were involved in deliberating this case. Each one of us gave our view as to what we should do with the 16 who have been discovered by the Internal Security Department for plotting, on a long-term basis, to subvert the stability of Singapore. All of us were satisfied

that the 16 were indeed involved in some nefarious activities, as reported by the Internal Security Department.

Both the Minister for Home Affairs and his Permanent Secretary in their affidavits dealt with the question of the disclosure of the Internal Security Department and the evidence. They both asserted that any disclosure would be against the national interest as it would lead to the discovery of the identities of sources and informers, the methodology and the actual extent of information known to the Internal Security Department. They further pointed out that such disclosure would pose a danger and disincentive to sources and informers and that the baring of the methodology and actual extent of information known to the Internal Security Department would threaten the efficiency and effectiveness of the security operations of the department.

I should now turn to the law of preventive detention in Singapore and the amendments to the Constitution and the Internal Security Act promulgated in Parliament in January 1989. The Constitution is the supreme law of the land and any law enacted by Parliament after the commencement of the Constitution which is inconsistent with it shall, to the extent of the inconsistency, be void: see Article. 4. There is set out in Part IV of the Constitution a number of fundamental liberties which provide for the liberty of the person (see Article 9), for equality (see Article 12), freedom of movement (see Article 13), speech, assembly and association (see Article 14) and of religion (see Article 15). As the Constitution has to be worked in less than a perfect world where violence and subversion are not uncommon, it is not possible to provide for such fundamental liberties cannot be provided in absolute and unconditional terms. So far as the liberty of the person is concerned, an exception realistically has to be made to ensure the integrity of the Constitution and, indeed, the very existence of a State. Accordingly by Article 9(6) of the Constitution it has been provided that nothing in Article 9 shall invalidate any law which authorises the arrest and detention of any person in the interests of public safety, peace and good order. That Parliament has to be conferred by the Constitution special powers to legislate against subversion has been and is specifically underlined by the Constitutional provisions as set out in Part XII of the Constitution. Thus, it was provided from the inception of our Constitution in Article 149 of the Constitution that legislation such as the Internal Security Act is valid and constitutional notwithstanding that it is inconsistent with Articles 9, 11, 12, 13 or 14 or which would, but for Article 149, be outside the legislative power of Parliament.

There are, however, some important Constitutional restrictions on any law which allows preventive detention without trial. By Article 151(1) it is constitutionally provided that the authority on whose order any person is detained under such a law shall as soon as may be, inform him of the grounds for his detention and, subject to an important proviso which I shall presently come to, the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be. The important proviso I referred to earlier is set out in Article 151(3) which provides that Article 151 does not require any authority to disclose facts, the disclosure of which would, in its opinion, be against the national interest. Before I part with Article 151 of the Constitution, it bears reminder that this Article requires a detainee to be informed of (a) the grounds for his detention; and (b) the allegations of fact on which the detention order is based. The Article does not in terms require that evidence admissible only in a Court of law and which evidentially substantiate the allegations of fact should be produced. It does not require evidence from witnesses to be produced nor the production of any written confessions, documentary or other evidence. Indeed, the framers of the Constitution recognised that disclosure of any fact may harm the national interest and has written in the proviso referred to earlier.

The Internal Security Act confers on the Minister for Home Affairs powers of preventive detention. By s. 8(1) therein, it is provided that if the President is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Singapore, it is necessary to do so, the Minister shall make an order directing that such person be detained for any period not exceeding two years. In *Chng Suan Tze v. The Minister of Home Affairs & Ors. & other appeals* [1989] 1 MLJ 69 the Court of Appeal ruled that evidence of the President's satisfaction must be such evidence as would be admissible at a trial which may be given by the President, or by the Cabinet Secretary or an authorised Minister where there is evidence that the Cabinet or the authorised Minister was satisfied and that the President after receiving the advice of the Cabinet or the authorised Minister was also satisfied. In the instant case, the Minister for Home Affairs has given such evidence in his affidavit and no issue arises in this regard.

By s. 8(2) the President may direct that the period of any detention order made under s. 8(1) be extended for a further period or periods not exceeding two years at a time.

The legislative scheme set out in the provisions of the Internal Security Act does not provide that a detention order can only be made after a trial in the usual way in a Court of law where only admissible evidence would and has to be tendered. Nor is it envisaged that the Judiciary would exercise any appellate jurisdiction in reviewing any evidence or determine if any allegation against any detainee is borne out by evidence tendered by the detaining authority and admitted in accordance with the law of evidence.

In the light of the constitutional and legislative scheme which I have set out in relation to the law of preventive detention, I should now refer to two cases before I turn to the amendments of January 1989. The first case is *Lee Mau Seng v. Minister of Home Affairs, Singapore & Anor*. [1971] 2 MLJ 137. It is important to note for present purposes that the decision of the High Court was given on 13 July 1971. An order of detention was made against Lee Mau Seng by the Minister for Home Affairs under s. 8(1) of the Internal Security Act. In his application for a writ of *habeas corpus*, Lee Mau Seng challenged the order of detention, *inter alia*, on the bases that (a) the grounds on which the order was made and the allegations of fact on which the order was based were vague, inadequate and irrelevant; and (b) the order of detention was made in bad faith. It was there held that the sufficiency and relevancy of the consideration upon which the executive detained the applicant under s. 8(1) of the Internal Security Act were matters for the subjective satisfaction of the President acting on the advice of the Cabinet or of the Minister. That has been described as "the subjective test." It was also held that '*mala fides*', which included allegations that the powers of detention were there used for improper purposes, is not a justiciable issue in the context of the scheme for preventive detention.

The second case is *Chng Suan Tse*. The Court of Appeal in this case on 8 December 1988 allowed the appeals on the ground that there was no sufficient evidence of the President's satisfaction as required under s. 8(1) of the Internal Security Act. In the appeal it was argued that the subjective test pronounced in *Lee Mau Seng* was no longer good law. Although the Court of Appeal did not adjudicate upon this question, its conclusion was summarised in the following terms:

> The President's satisfaction under s. 8 of the Internal Security Act and the Minister's satisfaction under s. 10 of the Internal Security Act are both reviewable by a Court of law as:
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> (a) the subjective test adopted in *Karam Singh* and its progeny can no longer be supported and the objective test is applicable upon a judicial review of the exercise of these discretions; ...

A scrutiny of the decision of the Court of Appeal shows that the Court of Appeal had opined, albeit *obiter dicta*, that a Court of law could examine whether the executive's decision was in fact based on national security consideration and whether the matters relied on by the executive fall within the scope of any of the purposes specified in s. 8(10) of the Internal Security Act. Further, in opining that the executive discretion conferred by s. 8(1) of the Internal Security Act was not conditioned upon the existence of any jurisdictional or precedent fact which the executive had to prove, such as that dealt with in *Khawaja v. Home Secretary* [1984] AC 74, the Court of Appeal nevertheless concluded that the scope of judicial review of the exercise of the discretion under s. 8(1) of the Internal Security Act could be undertaken on the now familiar GCHQ grounds of illegality, irrationality or procedural impropriety. This view of the scope of judicial review would have entailed in *habeas corpus* proceedings the production of evidence, either by way of affidavits or, not inconceivably where there are controversial issues of fact, in the examination of oral evidence in Court, subject always to the plea of constitutional or statutory privilege to which I have referred.

The *obiter dicta* of the Court of Appeal were followed very swiftly by the January 1989 amendments.

By Act No. 1 of 1989, Art. 149 of the Constitution was amended. The article as amended provides as follows (the amendments are in italic prints):

> (1) If an Act recites that action has been taken or threatened by any substantial body of persons, whether ... inside or outside Singapore:
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> (a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property;
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> (b) to excite disaffection against the President or the Government;
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> (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence;
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> (d) to procure the alteration otherwise than by lawful means, of anything by law established; or
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> (e) which is prejudicial to the security of Singapore,
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> any provision of that law designed to stop or prevent that action *or any amendment to that* Law *or any provision in any law enacted under the provisions of clause (3)* is valid notwithstanding that it is inconsistent with Article 9, 11, 12, 13 or 14, or would, apart from his Article, be outside the legislative power of Parliament.
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> (2) A law containing such a recital as is mentioned in clause (1) shall, if not sooner repealed, cease to have effect if a resolution is passed by Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under the Article.
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> (3) If, in respect of any proceedings whether instituted before or after the commencement of this clause, any question arises in any Court as to the validity of any decision made or act done in pursuance of any power conferred upon the President or the Minister by any law referred to in this Article, such question shall be determined in accordance with the provisions of any ... law as may be enacted of any...law as may be enacted by Parliament for this purpose; and nothing in Article 93 shall invalidate any law enacted pursuant to this clause.

By Act No. 2 of 1989, the Internal Security Act was amended by the addition of four new provisions: Sections 8A, 8B, 8C and 8D as follows:

8A. In this Part, 'judicial review' includes proceedings instituted by way of ... *a*

(a) an application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;

(b) an application for a declaration of an injunction;

(c) any writ of *habeas corpus*; and

(d) any other suit or action relating to or arising out of any decision made or act done in pursuance of any power conferred upon the President or the Minister by any provision of this Act. *b*

8B(1). Subject to the provisions of subsection (2), the law governing the judicial review of any decision made or act done in pursuance of any power conferred upon the President or the Minister by the provisions of this Act shall be the same as was applicable and declared in Singapore on 13 July 1971; and no part of the law before, on or after that date of any other country in the Commonwealth relating to judicial review shall apply. *c*

(2) There shall be no judicial review in any Court of any act done or decision made by the President of the Minister under the provisions of this Act save in regard to any question...relating to compliance with any procedural requirement of this Act governing such act or decision.

8C. Notwithstanding the provisions of any other written law, no appeal shall lie in the Judicial Committee of Her Britannic Majesty's Privy Council in any proceedings instituted by way of judicial review in respect of any decision made or act done under this Act or in respect of any questions of interpretation of the provisions of Part XII of the Constitution or any law made thereunder. *d*

8D. Sections 8A, 8B and 8C shall apply to any proceeding instituted by way of judicial review of any decision made or act done under the provisions of this Act, whether such proceedings have been instituted before or after the commencement of the Internal Security (Amendment) Act 1989. *e*

I should now deal with the submissions made on behalf of the applicant. Six submissions were made. First, it was submitted that on their true construction the amendments of the Internal Security Act do not preclude judicial review of decisions and acts purportedly taken or made under the Internal Security Act, which were in law nullities, and which were not taken or made "in purchase" of the power conferred upon the authority by the Internal Security Act. The second submission is an argument consequential upon this Court's acceptance of the applicant's first submission and it is this. If on a true construction of the amendments they have the effect as urged by the applicant, then it was argued Article 149 (as amended) did not authorise legislation of that character. The third submission is an alternative of the second submission. Mr. Beloff submitted that, on their true construction, if Article 149 (as amended) did authorise legislation of that character then the amendments to Article 149 were themselves not authorised by the Constitution. Fourthly, Mr. Beloff submitted that if any of the first three submissions were correct, then the state of the law in Singapore is as enunciated by the Court of Appeal in *Chng Suan Tze's* case and it must ineluctably follow that this Court can judicially review the decisions taken in this case and find that (a) irrelevant considerations were taken into account; and (b) the decisions were irrational in the sense that there was "no evidence" at all. Fifthly, it was submitted that if what had been adumbrated in *Chng Suan Tze* is the law then the respondents had failed to rebut the challenge on the evidence. The sixth and last submission is that if all five submissions were rejected this Court can still review the detention to see if it infringes the applicant's rights of religion under Article 15 of the Constitution and that the respondents had failed to rebut the applicant's challenge on the evidence. *f* *g* *h* *i*

In relation to the first submission it was repeatedly stressed that the challenge is not directed against the merits of any decision taken or act done within jurisdiction; the challenge is against any decision taken or act done for purposes not authorised by the Internal Security Act and were therefore nullities. Mr. Beloff said that the amendments to the Internal Security Act had precluded any judicial review of any decision or act taken or done within jurisdiction, whatever are the merits, but he pointed out that the amendments did not exclude review of any decision or act taken or done outside and beyond the jurisdiction conferred by the Internal Security Act. He rhetorically asked whether a red haired person could be arbitrarily arrested under the Internal Security Act, which, of course, is an absurd suggestion because how is the executive to state the grounds and the allegations of fact? In referring to the kind of *mala fides* referred to in *Lee Mau Seng*, which the High Court held was not justiciable, he said that *mala fides* was used in a special sense. He said it was unacceptable that the law could judge proof any executive action or decision which is deliberately taken for an improper purpose or on purely personal grounds. He then referred to the case of *Anisminic Ltd. Foreign Compensation Commission* [1969] 2 AC 147 and claimed that the errors committed by the executive in this case was of the kind, which was described by Lord Reid at p. 171B-E, and which went to the jurisdiction conferred on the executive by the Internal Security Act. It was observed that *Anisminic* was decided before 13 July 1971 and that the ouster clause in that case, which he contended was materially similar to s. 8B(2) was ineffective in excluding judicial review on the simple premise that Parliament could not have intended that the Foreign Compensation Commission could act outside its legislative mandate. Reference was also made to *Endell Thomas v. Attorney-General of Trinidad and Tobago* [1982] AC 113 where the Privy Council dealt with an ouster clause in a Constitution and approved the *Anisminic* principle. It is plain that this principle, where it applies, is quite incontrovertible. A Court of law must be able to see where a tribunal or an executive authority has exceeded its constitutional or legislative mandate, which Parliament itself would not have contemplated or condoned, and order the appropriate relief.

In my judgment, the *Anisminic* principles has no application to the salient facts of this case. It will only apply if there is evidence that the executive authority has exceeded its mandate or has misdirected itself on the law. It will therefore only apply if there is evidence that an executive authority has acted ultra vires. The salient facts in this case are as follows. The Minister, the entire Cabinet and the President had considered a report from the Internal Security Department, the contents of which satisfied them all that it was necessary to detain the applicant. As required, the executive has given the grounds for the detention and the allegations of fact. The applicant had admitted that he was a Marxist, that he was a member of the conspiracy, and, if I am not wrong, he even admitted in a television interview that if necessary he would have resorted to violence to bring about a Communist state. True, he has now by his affidavits recanted; he claims that he had nothing to do with any conspiracy and that he was practising his religious faith.

The Minister and his permanent secretary by their affidavits have claimed the privilege conferred on the executive and have claimed in the national interest the privilege of not disclosing the contents of the report or any other evidence which Internal Security Department had gathered against the applicant. It is for the executive to consider the evidence and form a view in regard to the interest of the security of the state. In these circumstances, I can see no justification for the applicant in this case to jump to the conclusion that there has been no evidence. By the scheme of the Internal Security Act and of the Constitution from its very inception, the executive has been entrusted as the sole body to look at and weigh the evidence and case against a person and to form a view on the question whether a detention order should be issued.

It will readily be seen that all six submissions made on behalf of the applicant make the assumption that there has been no evidence against the applicant. That assumption has to be proved. In truth and in fact, the case against him has been considered by the entire Cabinet and, in the light of his own confessions, though since withdrawn, the least that can be asserted against the applicant is that there has been some evidence against the applicant which related to national security and that once that assertion can be properly made it would be contrary to the scheme and the law of preventive detention for any Court of law to adjudicate on the sufficiency or relevancy of the evidence nor should a Court, by a side wind, as it were, investigate any allegation of bad faith or the abuse of the powers of the Internal Security Act. This part of the law was spelt out by the learned Chief Justice in *Lee Mau Seng* on 13 July 1971 and I entirely agree with the decision of Chua J that the intention of Parliament in enacting s. 8B(1) of the Internal Security Act is to affirm the law laid down in *Lee Mau Seng*.

The approach I take of this matter, in my view, is exactly that taken by the learned Judges in *Greene v. Secretary of State for Home Affairs* [1942] AC 284, in GCHQ and *R. v. Home Secretary, ex parte Ruddock* [1987] 1 WLR 1482. For the avoidance of doubt, I would repeat that it is not and never has been my view that in the last mentioned case Taylor J (as he then was) had merely accepted the assertions of the Minister as though it was a plea in bar. I took a realist's view of the case and observed that in all three cases it merely required affidavit opinions of the Ministers concerned to satisfy the judiciary that considerations of national security had operated.

In view of my decision that no case has been made out that there is no evidence against the applicant, it must logically follow that all six submissions of the applicant, each of which is predicated on the absence of any evidence against the applicant, must fall to the ground. Not all the issue raised in *Teoh Soh Lung* and fully considered by Chua J are relevant in this case. So far as his views are relevant in this case, I respectfully adopt them as though they are set out in seriatim and specifically concurred; this concurrence is, of course, on the basis that I am wrong on the view I take of the evidence.

Before I part with this judgment, I should set out concisely the propositions of law which had been stated by Chua J and with which I would respectfully concur. First, the High Court on 13 July 1971 declared in *Lee Mau Seng* that allegations of "*mala fides*", including any allegation that the powers under the Internal Security Act had been used for an improper purpose, are not justiciable issues in the context of the Internal Security Act. Secondly, ss. 8B(1) and 8B(2) of the Internal Security Act have effectively excluded any right of judicial review on the grounds of illegality, irrationality and unconstitutionality of any detention order. Thirdly, the well-known *Kesavananda* doctrine enunciated by the Supreme Court of India, which would have implied a limitation on the legislative powers of Parliament under Article 58 to legislate or under Article 5 to amend if the legislation or amendment would alter the basic structure of the Constitution, is not the law in Singapore. Fourthly, in any case, the January 1989 constitutional amendments did not in any way alter the basic structure of the Constitution.

The motion is accordingly dismissed with costs.

Also found at [1990] 1 CLJ 863

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